IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2380 OF 2005

Yashwant Ramchandra Vaidu ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.M.S.Mohite, for the Applicant.

Mr.A.S.Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

15th April 2005

P.C.:

. Heard Counsel for the parties. Perused the record. Although the offence in question is a serious one, but I find substance in the argument on behalf of the Applicant that the evidence against the Applicant is weak and may not be sufficient to record finding of guilt against the Applicant. Amongst others, three circumstances have been pressed against the

Applicant to indicate his complicity in the commission of the offence. The first circumstance is that when the Applicant was arrested, cash of about Rs.31,000/- was recovered from him. The second circumstance is recovery of mobile telephone from the spot where the incident took place, which was presumably left behind by the Applicant while escaping from the scene. The third circumstance is about the identification of the Applicant by one of the prosecution witnesses. I will take the last circumstance first.

. Insofar as identification parade is concerned, there is substance in the argument that that circumstance will be of no avail to the prosecution. Out of two prosecution witnesses, only one witness has identified the Applicant. However, same witness has identified another three persons during the identification parade, but those persons were dummies and not accused involved in the case. Even the other prosecution witness has identified dummies and not the Applicant during the identification parade. Moreover, the witness who has identified the

Applicant has not indicated any specific overt act of the Applicant or any identification mark, so as to accept the identification made by that witness. On the other hand, it is seen that the same witness has identified dummies as the accused. Viewed in this perspective, the identification of the Applicant done by the prosecution witness will not be sufficient to bring home guilt against the Applicant. If the identification goes, any other circumstance will be of no relevance.

. To get over this position, learned A.P.P. submits that there is strong circumstance against the Applicant that his mobile telephone was recovered from the spot where the incident took place and it appears that the Applicant contacted co-accused before and after the incident in question. This submission clearly overlooks that if the identification cannot be established, recovery of a mobile phone, by itself, will be of no relevance. Moreover, it is seen that the co-accused have not been identified by any of the prosecution witnesses. Therefore, assuming that the mobile phone recovered from the spot belonged

to the Applicant and that the Applicant had contacted the co-accused prior and after the incident, that will not take the matter any further. Accordingly, the only circumstance that remains is recovery of cash of Rs.31,000/- from the Applicant. However, this circumstance, by itself, may not be sufficient because the amount, which is recovered from the Applicant cannot be identified, as no special marks thereon were noticed as being part of the booty taken away by the accused from the complainant.

. Accordingly, I find substance in the argument of the Applicant that the evidence against the Applicant is very weak. Besides, the investigation is complete and charge sheet has been filed and that the Applicant is of tender age of 21 years. Moreover, the medical certificate produced by the Applicant does indicate that he is epilepsy patient. In the circumstances, taking overall view of the matter, the Applicant deserves to be enlarged on bail but on strict conditions as under.

(A) The Applicant is directed to be

enlarged on bail in connection with CR.No.345/2004 registered at Bhosari Police Station, Pune, on executing personal bond in the sum of Rs.10,000/- (Rupees Ten thousand only) with two local sureties in the like amount.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall report to the nearest police station (i.e., Panvel City Police Station) once in fortnight on Saturday between 10 a.m. to 2 p.m.

(D) The Applicant shall not leave the jurisdiction of Panvel City Police Station without prior intimation to the Senior Police Inspector of Panvel City Police Staiton and advance intimation thereof be sent to the investigating officer as well as the trial Court.

(E) The Applicant shall co-operate for early disposal of the trial. If the trial Court is of the opinion that the Applicant is in any manner responsible for the delay in disposal of the trial, that opinion be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)